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DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

SCOTT v. ALBEMARLE HORSE SHOW ASS'N.

Nov. 18, 1920.

[104 S. E. 842.]

1. Specific Performance (§ 8*)—Not Matter of Right.—The granting of specific performance is not a matter of right but of discretion, not arbitrary or capricious, but a sound judicial discretion controlled by established principles of equity and exercised upon a consideration of all the circumstances.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 483.]

2. Specific Performance (§ 121 (2)*)—Contract Must Be Distinctly Proved.—To justify specific performance of a contract it must be distinctly proved and its terms clearly ascertained.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 491.]

3. Specific Performance (§§ 28 (1), 28 (1), 32 (1), 49 (1), 51, 55*)—Requisites of Contract Stated.—To justify specific performance the contract must be reasonable, certain, legal, mutual, and based upon a valuable consideration.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 489.]

4. Specific Performance (§ 90*)—Plaintiff Must Not Have Been Backward in Seeking Rights.—The party seeking specific performance must not have been backward in enforcing his rights, but ready, desirous, prompt, and eager.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 569.]

5. Contracts (§ 153*)—Construed as a Whole and Every Part Given Effect.—Contracts are to be construed as a whole and effect given to every provision thereof, if possible.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 535, 536.]

6. Contracts (§ 160*)—Obligatory Part Controls Over Recitals.—If there is an inconsistency between the obligatory part of a contract and recitals therein, effect will be given to the obligatory part rather than the recitals, but the recitals are helpful in the construction of contracts as throwing light on the meaning and intent of the parties.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 535, 536.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Evidence (§ 461 (1)*)—Parol Evidence of Vendee's Knowledge of Building Restrictions Incompetent.—Where a contract for the sale of land requires a conveyance by deed with general warranty and covenants of title, it cannot be shown by parol that the vendee when the contract was executed had knowledge of the existence of building restrictions imposed by the deed to the vendor, for the purpose of excluding them from the covenant against incumbrances stipulated for.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 708.]

8. Vendor and Purchaser (§ 138*)—Vendee's Knowledge of Building Restrictions Does Not Entitle Vendor to Compel Acceptance Subject Thereto.—Though it be shown by competent evidence that, when a vendee entered into the contract stipulating for a conveyance by deed with general warranty and covenants of title he had knowledge of the existence of building restrictions in the deed under which the vendor held title, the vendor is not entitled to specific performance where it can only convey subject to such restrictions.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 614.]

F. C. Moon, of Lynchburg, and *A. L. Pitts, Jr.*, of Buckingham, for appellant.

L. T. Hanckel and *Allen & Walsh*, all of Charlottesville, for appellee.

WILLIAMS v. COMMONWEALTH.

Nov. 18, 1920.

[104 S. E. 853.]

1. Homicide (§ 21*)—Difference between Murder in the First and in the Second Degree Stated.—The difference between murder in the first and in the second degree turns on whether the homicide was willful, deliberate, and premeditated.

[Ed. Note.—For editorial comment, see 6 V. L. R., N. S., 456.]

[Ed. Note.—For other cases, see Va.-W. Va. Enc. Dig. 648.]

2. Homicide (§ 169 (9)*)—Police Chief's Testimony that He Had Ordered Deceased Policeman to Arrest Defendant Held Admissible.—In prosecution for murder of plain clothes policeman, involving issue of whether defendant himself had shot deceased in self-defense, not knowing him to have been a policeman, or had shot to kill, if necessary to avoid arrest for crime committed by him in another state, testimony of chief of police that he had told deceased and other policemen that defendant was in the city and was wanted for murder committed in the other state, and had ordered them to arrest him, if possible, held admissible.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 142.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.